



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 12 OF 2010

ROSE ADHIAMBO WAMBUTA.....PLAINTIFF

VERSUS

MAKENZIE JOSEPH.....DEFENDANT

J U D G M E N T

The Pleadings

1. In the plaint dated 23rd March, 2017 and filed in court on 1st February, 2010 the plaintiff seeks the following prayers:-

(a) A declaration that the plaintiff is the sole beneficial owner of five (5) acres of land duly demarcated and being within the parcel of land registered as LR Number 6193/2 plot no 71 and which was originally owned by Meteitei Farm co ltd (now in liquidation.)

(b) An order of eviction against the defendant, his agents and/or servants from the said five (5) land parcel LR Number 6193/2 plot no 71 and which was originally owned by Meteitei Farm co ltd (now in liquidation.)

(c) Costs of this suit.

(d) Such further or other relief this honourable court may deem fit to grant.

2. In the plaint the plaintiff's case is that Meteitei Farm Co Ltd owned LR 6193 /3; that it allotted one Petro Mengech plot number 71 measuring 5 acres and the company was later dissolved and its assets were further distributed to its shareholders; that Petro Mengech sold five acres of land to one Galcano Canny Mulaku who sold the same to the plaintiff; that the plaintiff took possession in 2001 and has been in possession to date and that on 12/10/2009 the defendant unlawfully trespassed onto the suit land and deprived the plaintiff of beneficial use of her land.

3. The defendant file a defence on 3/7/2014. He stated that on 20/6/2005 he purchased 0.8 Acres from one Stanley Kiprotich Kipsaro who was a son to one Kipsaro Maiyo, a member of the Meteitei Farm Co Ltd; that the land he purchased belonged to Kipsaro Maiyo; that during the survey of the company land it was found that the plaintiff was occupying extra land which was hived off and that the dispute had been lodged before the committee of the Meteitei Farm by the plaintiff and the committee ruled that the defendant had not trespassed. He states that he peacefully occupied and developed the land.

4. The plaintiff filed a reply to defence on 15/7/2014 denying all the claims in the defence.

Analysis of the evidence of the Parties

5. The plaintiff testified on 21/9/15 and upon recall, on 12/7/16. Her evidence was that the defendant, who was then unknown to her, forcefully entered her land which is Plot No 72, on 12/10/2009; she narrated how she bought the plot for Ksh 270,000/= from one professor Galcano Canny Mulaku vide an agreement which she produced as PExh 1. She also produced her payments receipts as PExh 2(a), (b) and (c).

6. Her evidence to that effect that the said professor Mulaku had bought the land from one Petro Mengech was PExh 7, a handwritten agreement for sale of 5 acres, apparently dated 2/1/88 between Petro and Galcano. It is apparently witnessed by 7 persons. On cross examination the plaintiff admitted that both PExh 1 and PExh 7 bore no plot number. She also agreed on cross examination that she also owns two other plots at the Meteitei Farm but denied that one of the two parcels was given to her as compensation for any shortfall on her

land.

7. PW2 Galcano Canny Mulaku testified on **20/6/2016**. He acknowledged **PEXh 7** as the agreement vide which he bought the land from Peter Mengich. He averred that he took possession of the land after purchasing it and farmed on it till he sold it to the plaintiff in **2001** and that he never knew of any dispute about the land. He testified that the land had been surveyed by the time he sold it. He stated that the land was later registered as **Kwanza/Kwanza Bk 8/72**; he further stated that his name as well as the acreage that he was entitled to in the company farm appeared in the proceedings in **Kitale Misc Application Number 92 of 1999**.

8. The defendant testified on **23/11/2017**. He stated that he bought his land measuring **0.8 acres** being **Plot Number 554** vide an agreement dated **20/6/2005 (DExh 1)** from one Stanley Kiprotich for the consideration of **Ksh 72,000/=** which he fully paid; that he and Stanley went to the Meteitei Farm Committee. However when he went to take possession he was informed that he should move to another plot bought by the plaintiff for him at another location but he refused. The committee then heard the dispute and resolved that each person remains on their respective plot. He insisted that the plaintiff's plot is 5 acres and that the plaintiff has sued him for the sole reason that he refused to move to the location she had wanted. **DExh 1** does not also have any plot number endorsed on it.

Determination.

9. The main issue that arises from the pleadings in suit is whether the defendant has trespassed upon the plaintiff's land.

10. I have examined the evidence of the parties.

11. The plaintiff has established that she owns land in the former Meteitei Farm and is in occupation of that land. Her grievance is that the defendant has trespassed on part of the land.

12. It would appear that the land parcels claimed by the plaintiff and the defendant are not registered, for no title documents showing that fact were produced by either party.

13. Though this was unregistered land, no survey report was produced by the plaintiff showing that her land was 5 acres and that the defendant has trespassed on any part of the 5 acres owned by the plaintiff.

14. Page 34 of the judgment in **Kitale HC Misc 92 of 1999** is of no help in this judgment; it has not been demonstrated by the plaintiff that the person named at **entry number 281** on that page, spelt "*Calano Owilaku*", is the same as "*Galcano Canny Mulaku*", the person who sold the plaintiff land.

15. This is not to say that the said Galcano Canny Mulaku did not have or did not sell land to the plaintiff, for indeed original receipts apparently issued by the Meteitei Farm Company Ltd to one Galcano Canny Mulaku were produced in evidence, and according to the record, the plaintiff is in possession of the land purchased from the said Galcano to date, though she claims part of it has been invaded by the defendant.

16. The plaintiff never addressed adequately the defendant's claim that her land was found to be in excess of 5 acres and that the excess portion was hived off by upon survey.

17. In the premises I do not find any evidence on the record to persuade me that the land occupied by the defendant belongs to the plaintiff, or is part of any land purchased by the plaintiff from Galcano Mulaku.

18. Consequently, I find that the plaintiff has failed to prove her claim against the defendant on a balance of probabilities.

19. I therefore make the following orders:

(a) The plaintiff's suit is hereby dismissed.

(b) Each party shall bear its own costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of December, 2018.

MWANGI NJOROGE

JUDGE

3/12/2018

Coram:

Before -Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Arunga for the defendant

Mr. Bisonga holding brief for Onyinkwa for plaintiff

COURT

Judgment read in open court.

MWANGI NJORGE

JUDGE

3/12/2018